IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22572 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAGHUJI MAGNAJI BIHOLA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR JAYANT P BHATT for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/02/2006

ORAL JUDGMENT

1.Rule. Learned AGP Shri Gori waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal

today.

2. In the present petition, the petitioner has challenged the order dated 12.9.2000 passed by the Collector, Gandhinagar as upheld by the order dated 29.6.2005 passed by the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat. The petitioner was granted land bearing plot No.706/2 admeasuring 135 sq. meters at concessional rate. Such allotment was made by an order dated 31.8.89. The petitioner with the permission of the authorities put up construction thereon. One of the conditions of grant of land was that the construction put up should be used only for residential purpose. The authorities found that the petitioner had started running a hostel and that therefore he had converted the nature of use of the building from that of residential to commercial. Show cause notice was therefore issued. The petitioner was called upon to discontinue the use of the building for the purpose of hostel. The petitioner, however, did not immediately stop such user and the Collector, Gandhinagar therefore by his order dated 12.9.2000 was pleased to order that the land shall vest in the Government. The petitioner filed revision application against the order passed by the Collector which,

however, came to be rejected on 29.6.2005.

3. Learned advocate for the petitioner mainly submitted that the building in question was put to use as a hostel only for a limited period of about 10 months. Before the authorities and before the State Government, it was contended that upon conclusion of the academic term, the use as a hostel would be discontinued. He further submitted that for the entire period from 1999 when the building was completed till today, only for a period of 10 months the building was put to such a use. He, therefore, submitted that the order confiscating the land and vesting the same in the Government is harsh.

4. Learned AGP Shri Gori opposed the petition. He submitted that the petitioner had earlier filed civil suit which ultimately came to be withdrawn on 27.10.2005. He pointed out that this has not been disclosed by the petitioner in this petition. He further submitted that the authorities have passed the impugned orders on the basis of material on record and such orders call for no interference.

5. Merely on the ground that civil suit was filed and later on withdrawn before filing of the present petition and that such facts were not disclosed in the

present petition would not justify my rejecting the petition in its entirety. However, the petitioner should be put to some terms for his non-disclosure of these facts in the petition.

6. The petitioner has been contending that the use of the building in question as a hostel lasted only for 10 months and right from 1999 when the building was completed till date, except for the above period of 10 months, the petitioner has been using the building for his personal residence. I find that this aspect of the matter needs to be factually verified on the available material that may be produced. If it is found that the petitioner used the building in question as a hostel only for a period of 10 months, the same would not, in the facts of the present case, justify confiscation of the land altogether. Some penalty may be imposed on the petitioner for his lapse, however, confiscating the land altogether in the facts of the present case would be harsh. However, this has to be established by the petitioner before the authorities.

7. In view of the above observations, the impugned orders are quashed and the proceedings are remanded to the Collector, Gandhinagar for fresh consideration. The petitioner shall be at liberty to produce additional

evidence on record. The Collector may conclude the fresh proceedings bearing in mind the observations made hereinabove. The petition is allowed accordingly. Rule is made absolute to the above extent. However, the petitioner shall pay cost of Rs.2500/- to the respondents.

(Akil Kureshi, J.)

(vjn)